

QLDC Council
10 October 2019

Report for Agenda Item | Rīpoata mot e Rāraki take : 11

Department: Property & Infrastructure

Title | Taitara 10 McMillan Road Legalisation and Exchange

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

The purpose of this report is to consider a road legalisation and exchange at 10 McMillan Road, Arthurs Point.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Approve** initiation of the procedures of section 114, 116 117 & 120 of the Public Works Act 1981 to undertake a road stopping and vesting as shown on the attached Clark Fortune McDonald & Associates plan Job No. 13943 dated 06/06/19 Revision B; and
3. **Approve** the exchange subject to the applicant paying all costs associated with process; and
4. **Approve** that the exchange be undertaken at Nil consideration; and
5. **Agree** that Council's approval to undertake this process and any sale and purchase agreements relating to it shall be limited to a period of 3 years from the date of this resolution; and
6. **Delegate** final terms and conditions, along with any associated agreements and consent notices to facilitate the legalisation and to provide any approvals for the placing or removal of easements, minor alignment, area changes and signing authority, to the Chief Executive of Council.

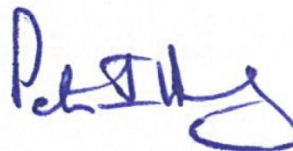
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26/09/2019

Reviewed and Authorised by:



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General Manager, Property and
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26/09/2019

CONTEXT | HORPOAKI

- 1 The Applicant Chris and Kylie Hogan purchased the house in 2013 and subsequently discovered that part of the dwelling was constructed within the legal road. Note they did not construct the portion of the house that encroaches into the road reserve.
- 2 In early 2019 the applicant planned to sell their property, but the encroachment meant that they were unable to proceed. The applicant then applied for an LTO over the portion of road, temporarily legalising the dwelling.
- 3 The owner now wishes to permanently legalise the dwelling within freehold land and has sought to acquire the road reserve in exchange for vesting new legal road on the main road between Queenstown and Arthurs Point, called Gorge Road.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 4 We understand that the owner purchased the property as-is and did not wilfully construct the dwelling within the legal road. This was only identified when the owner attempted to sell the property in early 2019.
- 5 A site visit has been undertaken and no issues were identified with the request. No services were identified that would require further protection prior to sale, however a covenant will be registered against the title of the property as part of the process, to ensure that future registration of easements for infrastructure (if located) can be completed at a later date.
- 6 Following discussion with the applicant and surveyor, the request to acquire the road was varied to become an equitable exchange, so that land adjoining the busy Queenstown to Arthurs Point Road known as Gorge Road will be exchanged and vested in the Council.
- 7 The exchange is considered equitable and benefits both parties, providing the Council with an option to widen or retain this section of road in the future if required. The exchange is therefore recommended to be approved on a Nil consideration basis. Please note a valuation has not been sought in this instance, due to the small areas involved and the equal land areas being exchanged.
- 8 QLDC Roding and Transport Engineers have been consulted on the request and have confirmed their support for the exchange.
- 9 Option 1 Agree to commence the road exchange and legalisation procedures described in this report.

Advantages:

- 10 Will legalise an existing road encroachment at 10 McMillan Road, and provide certainty of tenure to the existing and future owners.
- 11 Will provide additional legal road on the Queenstown to Arthurs Point Road for future widening and potential retaining.

12 Will be completed at no cost to the Council.

Disadvantages:

13 None identified.

14 Option 2 Decline the request.

Advantages:

15 None identified.

Disadvantages:

16 Will not legalise an existing road encroachment at 10 McMillan Road, and provide certainty of tenure to the existing and future owners.

17 Will not provide additional legal road on the Queenstown to Arthurs Point Road for future widening and potential retaining

18 This report recommends **Option 1** for addressing the matter because it resolves an existing encroachment with the Council road reserve and provides additional road width on a key arterial.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

19 This matter is of [medium] significance, as determined by reference to the [Council's Significance and Engagement Policy](#) because it involves the disposal through exchange of Council legal road.

20 The persons who are affected by or interested in this matter are the residents and ratepayers of the Queenstown Lakes District.

21 The Council has consulted with the applicant who is the main affected party by this proposal. Where there are directly adjoining owners to the exchange, those owners will be required to provide their consent to the exchange, prior to the process being completed. No further consultation is considered necessary in this instance.

> MĀORI CONSULTATION | IWI RŪNANGA

22 The Council has not consulted with Iwi in this instance, as the exchange involves land of particular interest to the owner and adjoining owners only.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

23 This matter relates to the Community & Wellbeing risk category. It is associated with RISK00009 within the QLDC Risk Register. This risk has been assessed as having a high inherent risk rating. This matter relates to this risk because the Council seeks a perpetual

property right through the exchange of legal road, and this risk needs to be highlighted when considering approving any roading action.

- 24 The approval of the recommended option will support the Council by allowing it to implement additional controls for this risk. This shall be achieved through the review and approval of any Public Works Act roading legalisation by affected land owners/interest holders, and the Minister of Lands.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 25 All costs associated with the exchange will be met by the applicant.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

26 The following Council policies, strategies and bylaws were considered:

- Significant & Engagement Policy 2014.

27 The recommended option is consistent with the principles set out in the named policy/policies.

28 This matter is not included in the Ten Year Plan/Annual Plan, but has no effect on it.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

29 To carry out the road exchange the Council must follow the procedures of section 114, 116 117 & 120 of the Public Works Act 1981, receiving all necessary consents to the exchange.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

30 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by resolving an encroachment within the road reserve, and providing an increased road width on a key arterial;
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

ATTACHMENTS | NGĀ TĀPIRIHANGA

- A Road Exchange Plan
- B Location Plan
- C Location Plan (zoomed in)